
Washington State Water Right Adjudication Process

A Primer

A *general adjudication of water rights* determines the validity and extent of existing water rights in a given area. An adjudication is a legal process, conducted through the superior court in the county in which the water is located. An adjudication does not create new rights, it only confirms existing rights. This primer will give you information about how the adjudication process works.

The adjudication process is common to many western states because of the unique western experience because scarce water sources to settle these largely arid, dry lands historically have resulted in complexity and controversy for water rights.

An adjudication benefits water users because it clarifies existing water rights. This provides greater certainty to the ability to use water and the extent of the water right. An adjudication helps the Department of Ecology to better regulate in favor of senior water rights holders during times of shortage and controversy. It also provides Ecology more information to use when considering the impact of granting new rights and proposed changes to existing rights. When the court grants a water right in an adjudication (surface or ground water), it directs Ecology to issue a Certificate of Adjudicated Water Right.

In general, the process for an adjudication is as follows:

1. The area to be adjudicated is defined. For surface water, this area could be either a stream drainage basin (all the land drained by the stream), or a lake or other surface water body. In the case of ground water, the area to be adjudicated could be the area served by a specific aquifer(s). An aquifer is defined as an underground water body.
2. A citizen, organization, or Ecology files the case in a superior court and, for the purposes of the court case, Ecology becomes the plaintiff.
3. Known water users or water right holders within the defined area are notified of the adjudication by summons issued by the superior court. These water users/water right holders are the defendants. People or entities who feel they have a right to use water, whether named defendants or not, can file a Statement of Claim with the superior court. These forms are sometimes referred to as court claims, and should not be confused with Statement of Water Right Claim forms used in registering water right claims with Ecology. In addition to being defendants, these people become Claimants. Claimants may represent themselves or be represented by an attorney.

4. A referee conducts an evidentiary hearing. Those claiming the right to use water (or their representatives) appear at the hearing to present factual information through testimony and documents supporting their claim.
5. After the hearing, the referee issues findings and recommendations to the court as to which claims should be confirmed water rights and what priority date is associated with each right. The judge reviews the recommendations, and issues a final order in the matter. The order is called a decree.
6. In large complicated adjudications, such as the Yakima River Basin General Adjudication of Surface Water Rights, the superior court judge can elect to hear certain claims (i.e. the federal government, Tribes, and major claimants) and refer other claims to the referee for hearing.

Each confirmed right includes:

- Priority date - the date when your water right was established. The tradition of the legal doctrine (prior appropriation), is "first in time, first in right," which means that the priority date determines the relative seniority of the water right against all others;
- Purpose of use;
- Quantity - the amounts of water a person or organization can use (both instantaneous and annual), the time of year the water right can be used, and in the case of irrigation, the number of acres;
- Point of diversion - the location where the water is taken from its natural source;
- Place of use - the land on which the water is used; and

- Any limitations on use specific to the confirmed water right.

During an adjudication, the two most important elements of protecting a water right are:

1. Filing a Statement of Claim with the court, and
2. Supporting that claim at the evidentiary hearing.

Evidence to support the claimed water right can come in many forms and from many places. Most of it will be old and historic in nature. Examples used in past adjudications to document how, when, or where the water system was developed and used include:

- Newspaper clippings which refer to the property or water system,
- Photographs that can establish a date and water use,
- Maps,
- Historical documents describing the property and/or water system (homestead documents, notices of appropriations, easement for ditches, etc.),
- Letters that would indicate water use or development,
- Books about the area,
- Tax statements or receipts for materials that show property and water use,
- County and state records,
- Chain of ownership (deeds that mention water rights),
- Affidavits from individuals attesting to personal historic knowledge of the water system and water uses (commonly referred to as Old Timer Affidavits), or
- Direct testimony by Old Timers with personal knowledge of development of water use in the vicinity.

A party to an adjudication would not supply original documents to the court. Documents submitted into evidence become part of the case and will not be returned.

The following locations may prove useful when searching for historical evidence:

- The attic or basement,
- Family scrapbooks or bibles,
- Local museums or historical societies,
- State archives,
- County engineer's office (for maps of early roads that may show ditches and streams, etc.),
- County auditor's office (to track property ownership),
- Bureau of Reclamation (for old maps and surveys),
- Ecology's regional offices (for copies of existing water right certificates or water right claims), and
- Local courthouse (copies of civil suits dealing with the water and/or property use).

Eighty-two small drainage systems in the state have been adjudicated. Seven adjudications are currently ongoing, with petitions filed to adjudicate 39 more. Only a small portion of Washington's 165,000 water right claims have been adjudicated and there is no current timeframe to adjudicate the remaining claims.

At the end of the adjudication process, the only water rights legally recognized are those confirmed by the adjudication process.

To understand how the adjudication process fits into Washington's water law history, please call the Department of Ecology's Publication office at (360) 407-7472 and request Publication #WR-98-152, "Washington State Water Law, A Primer."

For more information

This publication does not cover every possible element of an adjudication or provide legal advice. If you have questions about the adjudication process, call the Department of Ecology's Adjudication office, (360) 407-6641. If you have questions requiring a legal opinion, we recommend that you obtain the services of an attorney.

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